



**Legislative Bulletin.....March 10, 2004**

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**Summary of the Bills Under Consideration Today:**

Total Number of New Government Programs: 0

*Year to Date Prior to Today's Bills: 7*

Total Cost of Discretionary Authorizations: \$28 million over five years

*Year to Date Prior to Today's Bills: \$10.319 billion over five years\**

Total Amount of Revenue Reductions: 0

*Year to Date Prior to Today's Bills: \$304 million over five years*

Total Change in Mandatory Spending: 0

*Year to Date Prior to Today's Bills: -\$258 million over five years\**

Total New State & Local Government Mandates: 1

*Year to Date Prior to Today's Bills: 3*

Total New Private Sector Mandates: 1

*Year to Date Prior to Today's Bills: 6*

\*Not including the costs contained in H.R. 3783, the Surface Transportation Extension Act, which passed the House on 2/11/04. A cost estimate remains unavailable.

## **H.R. 2714—State Justice Institute Reauthorization Act (Smith of Texas)**

**Order of Business:** The bill is scheduled for consideration on Wednesday, March 10<sup>th</sup>, under a motion to suspend the rules and pass the bill.

**Summary:** H.R. 2714 reauthorizes the State Justice Institute (SJI) for fiscal years 2005-2008 (current authorization for SJI expired in 1996). Specifically the bill:

- Authorizes \$7 million annually for fiscal years 2005-2008 (the expired authorization was \$25 million for fiscal year 1996, FY04 appropriation was \$2.25 million), with amounts available until expended;
- Authorizes SJI to purchase goods and services from the General Services Administration;
- Extends federal health insurance benefits to five SJI employees; and
- Clarifies that executive committee meetings are to be open to the public when the committee has been delegated the authority to act on behalf of the Board of Directors.

**Additional Background:** According to its website, the State Justice Institute is a private, nonprofit organization established by Congress in 1984 “to award grants to improve the quality of justice courts, to facilitate better coordination and information sharing between state federal courts, and to foster solutions to common problems faced by all courts.” According to the Judiciary Committee report for H.R. 2714 (House Report 108-285), SJI has awarded more than \$125 million in grants and raised \$40 million in matching funds from other public and private sources.

A Department of Justice study of SJI, required by Public Law 107-179, stated that SJI “appears to have been effective in awarding grants to improve the quality of justice in the state courts, facilitating better coordination and information sharing between state and federal courts, and fostering solutions to common problems faced by all courts. We also conclude that SJI appears to have complied with statutory restrictions on funding and activities under 42 U.S.C. §§ 10706 and 10707.”

**Since 2001, Congress has considered eliminating federal funding for SJI.** The conference report containing SJI funding for fiscal year 2002 stated, “The conferees do not recommend continued Federal support for the Institute beyond fiscal year 2002. The termination of funding for this program does not necessarily mean the dissolution of the Institute. The conferees encourage the Institute to solicit private donations and resources from State and local agencies.” For fiscal year 2003, the conferees stated that, “the Institute has not been successful in its efforts to obtain non-Federal funds.... The Conferees encourage SJI to continue to solicit donations in order to fund its programs including asking for support from State, local and national bar associations.... The Conferees feel that the bar associations and the States, who are the beneficiaries of SJI's work, should contribute to funding its programs.”

**Committee Action:** The Subcommittee on Courts, the Internet, and Intellectual Property approved H.R. 2714 by voice vote on July 22, 2003. The full Judiciary Committee favorably reported the bill by voice vote on September 10, 2003.

**Administration Position:** While an official Administration position on H.R. 2714 is not available, the President did not include funding for SJI in his fiscal year 2005 budget request.

**Cost to Taxpayers:** The Congressional Budget Office estimates that H.R. 2714 will cost \$20 million over the 2005-2008 period, subject to appropriations.

SJI was appropriated \$2.25 million for fiscal year 2004.

**Does the Bill Create New Federal Programs or Rules?:** The bill reauthorizes a program whose authorization expired in 1996 that Republicans had sought to terminate funding for and expands federal health benefits to cover employees at the program.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Constitutional Authority:** The Judiciary Committee, in House Report 108-285, cites Article I, Section 8, but fails to cite a specific clause.

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## **H.R. 2391—Cooperative Research and Technology Enhancement (CREATE) Act (Smith of Texas)**

**Order of Business:** The bill is scheduled for consideration on Wednesday, March 10<sup>th</sup>, under a motion to suspend the rules and pass the bill.

**Summary:** H.R. 2391 would make changes to patent law to enhance patent protection for collaborative work by researchers from multiple organizations. Specifically, the bill extends a current law “safe harbor” provision (that treats inventions of a common owner similarly to inventions made by a single person) to “joint research agreement” inventors. This means that earlier inventions or research by individuals who are a part of the joint research team would not be considered “prior art,” which under normal circumstances would lead to the denial of a patent for the invention that results from the collaborative work.

**Additional Background:** H.R. 2391 is intended to clarify Congress’ intent in enacting the 1984 “safe harbor” provision. A 1997 Federal Circuit case ruled that the provision only applied to a joint invention developed within a single organization.

**Committee Action:** The Subcommittee on Courts, the Internet, and Intellectual Property approved H.R. 2714 by voice vote on July 22, 2003. The full Judiciary Committee favorably reported the bill by voice vote on January 21, 2004.

**Cost to Taxpayers:** The Congressional Budget Office estimates that H.R. 2391 would have an insignificant effect on discretionary spending and would not affect direct spending or revenues.

**Does the Bill Create New Federal Programs or Rules?:** No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Constitutional Authority:** The Judiciary Committee, in House Report 108-425, cites Article I, Section 8, but fails to cite a specific clause. However, Clause 8 gives Congress the power to “promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”

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## **H.R. 339—Personal Responsibility in Food Consumption Act (Keller)**

**Order of Business:** The bill is scheduled to be considered on Wednesday, March 10<sup>th</sup>, subject to a modified open rule (H.Res. 552) that makes in order only those amendments that are pre-printed in the *Congressional Record* or are pro forma amendments for the purpose of debate only. See “Amendments” section below.

**Summary:** H.R. 339 would prohibit certain lawsuits against the manufacturers, marketers, distributors, advertisers, or sellers of food or non-alcoholic beverage products (or their trade associations) that comply with applicable statutory and regulatory requirements. That is, civil liability actions regarding obesity, weight gain, or any associated conditions could not be brought in any federal or state court against the food industry, and any pending action in this regard would be immediately dismissed upon enactment of this legislation. This limitation on civil actions would **NOT** apply to:

- actions in which a manufacturer or seller of a qualified product (as defined in section 201(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(f))) knowingly and willfully violated a federal or state statute applicable to the manufacturing, marketing, distribution, advertisement, labeling, or sale of the product, and the violation was a proximate cause of injury related to a person's weight gain, obesity, or any health condition associated with a person's weight gain or obesity;
- actions for breach of express contract or express warranty in connection with the purchase of a qualified product; or
- actions regarding the sale of a qualified product that is adulterated (as described in section 402 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342)).

The limitation on civil actions in H.R. 339 *would* apply to actions, for example, in which a party claims that eating too much of a certain food product made him or her overweight. In more technical terms, the civil actions prevented by this bill would be those:

...brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, penalties, declaratory judgment, injunctive or declaratory relief, restitution, or other relief arising out of, related to, or resulting in injury or potential injury resulting from a person's consumption of a qualified product and weight gain, obesity, or any health condition that is associated with a person's weight gain or obesity, including an action brought by a person other than the person on whose weight gain, obesity, or health condition the action is based, and any derivative action brought by or on behalf of any person or any representative, spouse, parent, child, or other relative of any person...

Note: the term “person” in this context means “any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, including any governmental entity.”

H.R. 339 does **not** limit the ability of Congress, state legislatures, or regulatory agencies to determine appropriate laws, rules, and regulations to address the problems of weight gain, obesity, and other health conditions associated with weight gain or obesity.

**Amendments Pre-Printed in the Congressional Record:**

**#1 Ackerman:** Exempts from the bill’s liability protections those slaughtering, packing, meat canning, rendering, or similar establishments that manufacture or distribute for human consumption “downed” cattle, sheep, swine, goats, horses, mules, or other equines.

**#2 Andrews:** Exempts from the definition of “qualified product” foods that contain genetically engineered material, unless the labeling for such food bears a statement providing that the food contains such material and the labeling indicates which of the ingredients of the food are or contain such material.

**#3 Inslee:** Adds *negligence* of federal or state law to the bases for civil actions allowed to proceed under the legislation. (The base text allows suits for willful and knowing violations.)

**#4 Lampson:** Provides that this bill would not apply to actions brought by, or on behalf of, a person injured at or before the age of 8, against a seller that, as part of a chain of outlets at least 20 of which do business under the same trade name (regardless of form of ownership of any outlet), markets qualified products to minors at or under the age of 8.

**#5 Sensenbrenner:** Strikes from the list of civil actions that could go forward under this bill actions regarding the sale of a qualified product that is adulterated and replaces it with actions “brought under the Federal Trade Commission Act (15 U.S.C. 41 et seq.) or the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.)” Makes technical corrections.

#6 Watt: Clarifies that this legislation would not apply to an action brought by a state agency to enforce a state consumer protection law concerning mislabeling or other unfair and deceptive trade practices.

#7 Watt: Strikes this bill's applicability to state courts.

#8 Watt: Strikes the section that would immediately dismiss pending obesity and weight gain cases.

#9 Jackson-Lee: Expands the prohibited civil actions to include those actions brought by a manufacturer or seller of a qualified product, or a trade association, against any person.

#10 Jackson-Lee: Provides that this bill would not apply to actions alleging that a product claiming to assist in weight loss caused heart disease, heart damage, primary pulmonary hypertension, neuropsychological damage, or any other complication that may also be generally associated with a person's weight gain or obesity.

**Additional Background**: During the summer of 2002, New York attorney Sam Hirsch filed a multi-billion-dollar lawsuit against McDonald's, saying that the fast-food chain "negligently, recklessly, carelessly and/or intentionally" markets to children food products that are "high in fat, salt, sugar, and cholesterol" while failing to warn of those ingredients' links to "obesity, diabetes, coronary heart disease, high blood pressure, strokes, elevated cholesterol intake, related cancers," and other conditions. Mr. Hirsch's efforts were stunted twice. On September 3, 2003, a federal district judge in New York threw out Mr. Hirsch's lawsuit for the second time because Mr. Hirsch again failed to state a claim, despite having been given explicit guidance by the court when his first case was dismissed with instructions for what he needed to demonstrate for his case to proceed.

The fear is that other suits like the McDonald's suit may start appearing. As personal injury attorney John Banzhaf said recently, "You may not like it . . . but we'll find a judge. And then we'll find a jury" that will find restaurants liable for their customers' overeating.

According to a recent Gallup Poll, as cited in House Report 108-432: "[n]early 9 in 10 Americans (89%) oppose holding the fast-food industry legally responsible for the diet-related health problems of people who eat that kind of food on a regular basis. Just 9% are in favor. Those who describe themselves as overweight are no more likely than others to blame the fast-food industry for obesity-related health problems, or to favor lawsuits against the industry."

The Judiciary Committee notes that the food service industry employs about 11.7 million people in the United States, making it the nation's largest employer besides government.

**Committee Action**: On June 19, 2003, the Judiciary Committee's Subcommittee on Commercial and Administrative Law held a hearing on this bill. On January 28, 2004, the full Committee marked up and by voice vote ordered the bill reported to the full House.

**Possible Conservative Concerns:** There are no known conservative objections to this legislation. [See “Constitutional Authority” section below.]

**Administration Position:** Although a Statement of Administration Policy (SAP) is not yet available, White House sources report that the SAP will be supportive of H.R. 339.

**Cost to Taxpayers:** CBO confirms that H.R. 339 would not have a significant effect on the federal budget.

**Does the Bill Create New Federal Programs or Rules?:** No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** Yes. H.R. 339 would prohibit state and local governments and the private sector from pursuing certain civil lawsuits concerning obesity, weight gain, or related health conditions and would preempt certain state liability laws and the authority of state courts to hear such cases. [See “Constitutional Authority” section below.]

**Constitutional Authority:** The Judiciary Committee, in House Report 108-432, cites constitutional authority in Article I, Section 8, Clause 3 (the congressional power to regulate commerce among the states).

The Judiciary Committee includes the following statement in its committee report:

The lawsuits against the food industry that H.R. 339 addresses directly implicate core federalism principles articulated by the United States Supreme Court in *BMW of North America, Inc. v. Gore*, which has made clear that “one State’s power to impose burdens on the interstate market . . . is not only subordinate to the Federal power over interstate commerce, but is also constrained by the need to respect the interests of other States . . .” Congress can of course exercise its authority under the Commerce Clause to prevent a few State courts from bankrupting the food industry, the largest non-governmental employer in the Nation.

In fast food lawsuits, personal injury attorneys seek to obtain through the courts stringent limits on the sale and distribution of food beyond the court’s jurisdictional boundaries. By virtue of the enormous compensatory and punitive damages sought, and because of the types of injunctive relief requested, these complaints in practical effect would require manufacturers of lawfully produced food to curtail or cease all lawful commercial trade in that food in the jurisdictions in which they reside—almost always outside of the States in which these complaints are brought—to avoid potentially limitless liability. Insofar as these complaints have the practical effect of halting or burdening interstate commerce in food, they can be appropriately addressed by Congress.

The Supreme Court in *Healy v. Beer Institute* elaborated on these principles concerning the extraterritorial effects of State regulations as follows:

The critical inquiry is whether the practical effect of the regulation is to control conduct beyond the boundaries of the State. . . . [T]he practical effect of the statute must be evaluated not only by considering the consequences of the [law] itself, but also by considering how the challenged [law] may interact with the legitimate regulatory regimes of other States and what effect would arise if not one, but many or every, State adopted similar [laws]. Generally speaking, the Commerce Clause protects against inconsistent

[laws] arising from the projection of one State regulatory regime into the jurisdiction of another State.

**Outside Organizations:** The U.S. Chamber of Commerce has publicly expressed “strong support” for the legislation and has urged Members to “vote against any weakening or hostile amendments.” The Chamber may use votes on or related to this bill in its annual “How They Voted” scorecard.

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## **H.Con.Res. 15—Commending India on its celebration of Republic Day (Wilson of South Carolina)**

**Order of Business:** The resolution is scheduled to be considered on Wednesday, March 10<sup>th</sup>, under a motion to suspend the rules and pass the bill.

**Summary:** H.Con.Res. 15 would resolve that Congress “commends India on its celebration of Republic Day and reiterates its support for continued strong relations between the United States and India.”

**Additional Background:** On January 26, 1950, India adopted its Constitution, which formalized India as a parliamentary democracy. Therefore, each year on January 26<sup>th</sup>, India celebrates its Republic Day.

**Committee Action:** On February 25, 2004, the International Relations Committee considered the resolution but took no official action on it.

**Administration Position:** To read a recent statement by President Bush about the “strategic partnership” between the United States and India, visit this webpage:  
<http://www.whitehouse.gov/news/releases/2004/01/20040112-1.html>

**Cost to Taxpayers:** The resolution would authorize no expenditure.

**Does the Bill Create New Federal Programs or Rules?:** No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

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**H.Res. 540 — Expressing the condolences and deepest sympathies of the House of Representatives for the untimely death of Macedonian President Boris Trajkovski (Souder)**

**Order of Business:** The resolution is scheduled for consideration on Wednesday, March 3, 2004, under suspension of the rules.

**Summary:** The resolution contains 8 findings regarding the life and death of Macedonian President Boris Trajkovski, and states that it is resolved:

“That the House of Representatives—

- expresses its deepest sympathies to the people of The Former Yugoslav Republic of Macedonia, the family of President Boris Trajkovski, and the families of the other crash victims;
- expresses its desire for a smooth and orderly transition of power; and
- expresses the solidarity of the people of the United States with the people of Macedonia and the Macedonian government during this tragedy.

**Additional Information:** On February 26, 2004, President Boris Trajkovski of The Former Yugoslav Republic of Macedonia was killed in a plane crash in Bosnia-Herzegovina while he was on his way to an international investment conference. He was inaugurated as President on December 15, 1999, after serving as Macedonia’s Deputy Minister of Foreign Affairs since December 21, 1998. According to the resolution’s findings: Mr. Trajkovski “stood up for what he believed was right and moral, ... worked to foster peace for the entire Balkan region ... was a strong believer in free markets and worked tirelessly to bring development and investment to Macedonia.” Under Mr. Trajkovski’s leadership, Macedonia was one of the first countries to publicly support Operation Iraqi Freedom and to commit troops to the effort.

**Committee Action:** The resolution was introduced on February 26, 2004, and referred to the House Committee on International Relations. The Subcommittee on Europe considered the resolution and ordered it to be reported to the full Committee by voice vote on March 3, 2004. The full committee did not consider the resolution.

**Cost to Taxpayers:** The resolution authorizes no expenditure.

**Does the Bill Create New Federal Programs or Rules?:** No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

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## **H.R. 3915--Additional Temporary Extension of Programs Under the Small Business Act (Manzullo)**

**Order of Business:** The bill is scheduled to be considered on Wednesday, March 10<sup>th</sup>, under a motion to suspend the rules and pass the bill.

**Summary:** H.R. 3915 would extend through May 21, 2004 the authority to operate programs or activities of the Small Business Administration. Public Law 108-172 (enacted on December 6, 2003) provided an extension through March 15, 2004. The last extension passed the House by unanimous consent. The bill also extends the current law authority for the SBA to collect fees in order to guarantee loans to state and local development companies. The existing authority expires on March 15, 2004. The authority would be extended to September 30, 2004 under H.R. 3915.

H.R. 3915 does NOT contain any fee increases for existing loan programs as was rumored earlier in the week.

**Additional Background:** The House and Senate are currently working on long-term reauthorization bills for the Small Business Administration.

**Committee Action:** On March 9, 2004, the bill was introduced and referred to the Small Business Committee.

**Cost to Taxpayers:** The bill would appear to have no cost to the taxpayer.

**Does the Bill Create New Federal Programs or Rules?:** No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Constitutional Authority:** The Committee did not file a Committee Report and thus has not identified the Constitutional Authority to enact this bill.

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